

THE LAW OFFICES OF

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17894  
RECORDATION NO. FILED 1425

July 13, 1992

JUL 21 1992 - 10 50 AM

INTERSTATE COMMERCE COMMISSION

Office of the Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

RE: Lease of Locomotive Equipment  
National Railway Equipment Company, Lessor  
Quantum Chemical Corporation, Lessee

Dear Mr. Secretary:

I have enclosed an original and one copy of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a lease of locomotive equipment and is a primary document dated June 9, 1992. The names and addresses of the parties to the documents are as follows:

Lessor

National Railway Equipment Company  
An Illinois Corporation  
14400 S. Robey Street  
P.O. Box 2270  
Dixmoor, IL 60426

Lessee

Quantum Chemical Corporation  
A Delaware Corporation  
P.O. Box 2919  
Clinton, IA 52733-2919

JUL 21 10 49 AM '92  
MOTOR OPERATING UNIT

A description of the equipment covered by the document follows:

<u>Unit No.</u>	<u>Type</u>	<u>General Description</u>
0016	EMD SW 1200	Locomotive

Office of the Secretary  
July 13, 1992  
Page 2

A fee of \$16.00 is enclosed. Please return the original and any extra copies not needed by the commission for recordation to Richard F. Loritz, 9533 W. 143rd Street, Orland Park, IL 60462.

A short summary of the document to appear in the index follows:

A lease of locomotive equipment identified as one (1) locomotive, type EMD SW 1200, with National Railway Equipment Co., as Lessor, and Quantum Chemical Corporation, as Lessee.

Also attached is an Affidavit executed by the attorney in fact for National Railway Equipment Co. and appropriately notarized declaring that the enclosure is the original document.

Very truly yours,

NATIONAL RAILWAY EQUIPMENT CO.  
an Illinois Corporation

BY: Richard F. Loritz  
RICHARD F. LORITZ

ITS: Attorney and Agent in Fact

RFL/sjg

Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

7/21/92

OFFICE OF THE SECRETARY

Richard F. Loritz

Orland State Bank Building

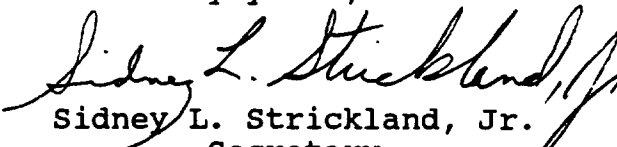
9533 West 143rd Street

Orland Park, Illinois 60462

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/21/92 at 10:50am , and assigned recordation number(s). 17894

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

JUL 21 1992 10 50 AM

INTERSTATE COMMERCE COMMISSION

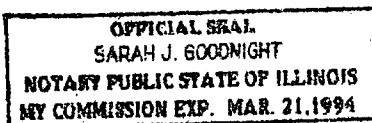
STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

This Affidavit is made pursuant to the procedures in Section 117.3(2)(b) relative to the recordation of documents with the Interstate Commerce Commission.

**AFFIANT**

Subscribed and Sworn to  
before me this 13<sup>th</sup> day  
of July, 1992.

NOTARY PUBLIC



17894

RECORDATION NO. \_\_\_\_\_ FILED 1425

JUL 21 1992 -10 50 AM

LOCOMOTIVE LEASE

INTERSTATE COMMERCE COMMISSION

This agreement, is made as of the 9th day of June, 1992, by and between NATIONAL RAILWAY EQUIPMENT CO., (hereafter called "National") and QUANTUM CHEMICAL CORPORATION, a Delaware Corporation, (hereafter called "Quantum").

A. WARRANTY AND MAINTENANCE

1. Warranty. National warrants all parts and components described in Exhibit A against defects in materials and workmanship for a period of five (5) years while under our maintenance supervision and shall repair or replace at National's sole cost and expense all such defective parts and components.

2. Maintenance. National agrees to maintain the locomotive described in Exhibit A in satisfactory operating condition so as to meet all applicable Federal Railroad Administration and other federal, state, or local requirements. National shall provide one qualified employee(s) with a vehicle to perform the routine maintenance every sixty (60) days. National shall also provide labor and material for any repairs that are estimated to require more than two (2) hours of work. National shall be responsible for all repairs such as engine failure, main generator failure, etc. for the term of the lease with the exception of the routine servicing, consumable items and any physical damage caused to the locomotive out of negligent operation of the locomotive by Quantum. Quantum shall provide routine service for the

locomotive and consumables such as fuel, lubricants, sand, filters, brake shoes, fuses, light bulbs and carbon brushes. The unit is to be maintained at existing facilities provided by Quantum at no cost to National. National shall supply all tooling to perform necessary inspections and repairs. Quantum is to provide water, electricity, air, access to telephone service and a suitable storage area for maintenance repair parts.

3. Environmental Impact. National shall perform its obligations hereunder in full compliance with all applicable federal, state, or local laws regulations, orders, and judgments referring or relating to protection of human health or safety and the environments ("Environmental Laws"). The foregoing shall specifically include, without limiting the generality thereof, Environmental Laws relating to the discharge, disposal, control, spillage and monitoring of and exposure to polychlorinated biphenyls ("PCBs"). National agrees to indemnify and hold Quantum harmless from and against all liabilities of whatsoever nature, including reasonable attorneys' fees, arising from or relating to National's failure to comply with any Environmental Laws in the performance of its obligations hereunder. National will not be responsible for any "excessive" oil leakage that may occur between period "60 day" inspections. National will however, make every attempt to correct any such leaking in a timely manner. Quantum will be responsible for advising National of any leaks that may occur.

4. Rate. Quantum shall pay National for the lease of the locomotive as described in Exhibit A at the rate of four thousand dollars (\$4,000.00) per month. This rate includes all maintenance as outlined Section 2.

5. Termination. This lease/maintenance agreement may be terminated by Quantum or National at annual intervals upon ninety (90) days notice in writing to National Equipment Co. at P.O. Box 2270, Dixmoor, Illinois 60426, or to Quantum at Quantum, P.O. Box 2919, Clinton, IA 52732, Attention Purchasing Department, or such other addresses as may be designated from time to time in writing. At the time of termination, National shall offer all remaining repair components remaining on Quantum's property to Quantum at a negotiated price.

#### B. LEASE OF LOCOMOTIVE EQUIPMENT

1. Base Terms. National agrees to supply on a lease basis one (1) locomotive as described in Exhibit A. Quantum agrees to pay National four thousand dollars (\$4,000.00) per month per locomotive as lease rental which includes all maintenance charges as outlined in Section 2 of this agreement for the term of five (5) years.

2. Lease Renewal. National shall offer Quantum the option to renew the locomotive lease/maintenance agreement for two successive terms of five (5) years each provided that Quantum shall provide written notice to National of its intent to exercise its renewal option at least ninety (90) days in advance of the termination of the initial or any succeeding five (5) year

term. The locomotive and maintenance monthly rates shall be negotiated at the time of renewal but, in the event the parties cannot agree to said rates, the monthly rates in effect during the preceding term of this Agreement shall be multiplied by one (1) and shall become the rates to apply during the renewal term.

3. Default. Upon default by Quantum in the payment of any amount under the terms of this rental agreement, whether as rental or otherwise, or upon the violation by Quantum of any of the terms and conditions hereof or if Quantum shall vacate, desert or abandon the locomotive or permit same to remain vacated, deserted or abandoned for a period of twenty (20) days and if the failure to remedy such default shall continue for more than thirty (30) days after notice of such default to Quantum, then National at its option by written notice to Quantum may declare this rental agreement to be terminated and all rights of Quantum in and to said locomotive to be at an end, and National shall become entitled to the immediate possession of the locomotive. The declaration of default and the repossession of the locomotives by National shall not excuse Quantum from the liability to National for any rental earned prior to the termination of said rental agreement, or for any other expenses incurred hereunder by National prior to the termination of said rental agreement. Quantum shall further be liable for and shall pay all expenses incurred by National resulting from Quantum's breach of Paragraph 12 below in National's taking said locomotives into its possession upon such or any default under the terms of this rental agreement.



4. Uses. The locomotive is to be used by Quantum for commercial railway hauling purposes; and Quantum shall comply with all rules of the Association of American Railroads, the Interstate Commerce Commission and the Federal Railroad Administration, or any successors thereto, with respect to the use, maintenance and operations of the locomotive while in the possession of Quantum.

5. Fees and Taxes. Quantum shall be liable for and pay and satisfy every lawful claim and liability for fees and taxes arising from the use or operation of said locomotive during the term of this rental agreement and, as additional rental, assumes hereunder all license fees, taxes, charges and penalties imposed by the state of operation or any other state, governmental, or municipal subdivision in which said locomotive may be situated, or may be operated, during the term of this rental agreement. If Quantum in good faith contests the lawfulness of the imposition of any such license fees, taxes, charges, and penalties, National shall cooperate with Quantum in such contest.

6. Ownership. National covenants and warrants its ownership of said locomotive and guarantees peaceful possession of the locomotive to Quantum at all times during the term of this agreement.

7. Insurance. A. Quantum will provide and maintain for the said locomotive while under lease, Quantum's current insurance, including current self-insurance provisions, to cover both National and Quantum against claims of third person as follows:

- a. Public liability and property damage coverage protecting National and Quantum with respect to their liability for injuries and/or death to third person and damage, destruction or loss of use of property of third persons, as provided in the insurance policy or policies.
- b. Said liability coverage shall provide for an aggregate limit of not less than Five Million dollars (\$5,000,000.00), to the extent as commercially available, for all damages arising out of the bodily injuries to or death of persons and for all damages to or destruction of property within one year.
- c. National shall not be required to provide any insurance coverage in connection with said leased locomotive other than as necessary to insure Quantum with respect to National's obligations, liabilities and indemnities as set forth herein.
- d. Quantum further agrees to provide and maintain physical damage insurance coverage for loss and damage to said locomotive due to fire, theft, windstorm, flood or other risks and hazards covered by the standard type of policy regularly issued therefore. National shall be named an additional insured in the above physical damage policy.
- e. In the event Quantum fails to procure or maintain the above insurance, National may procure or

maintain the insurance. The resultant cost shall be payable to National as part of the next rental payment, and Quantum's failure to pay this cost shall have the same effect as the failure to pay rent.

- f. Quantum shall provide National with a certificate of such insurance from the insurer.
- g. Quantum shall indemnify National against any loss, liability, damage or expense which it may incur by reason of any claim made by third parties growing out of the operation of said locomotive, except for any loss, liability, damage or expense caused or resulting from any failure of National to perform its obligations hereunder for which loss, liability, damage or expense National shall indemnify and hold Quantum harmless.

B. National shall provide and maintain insurance to cover both the National and Quantum against claims of third persons as follows:

- a. Claims arising under Workers' or Workmen' Compensation Acts with respect to employees of National performing maintenance service as outlined in this agreement.
- b. Public liability and property damage coverage, including a contractual liability endorsement insuring the obligations of National herein, protecting National and Quantum with respect to

their liability for injuries and/or death to third persons and damages, destruction or loss of use of property of third persons as a result of the acts or omissions of National in the performance of this agreement and the ownership or use of motor vehicles in connection with National performing maintenance services as outlined in the agreement.

- c. Said liability coverage shall provide for a limit of not less than \$1,000,000.00 for all damages arising out of each occurrence.
- d. National shall provide Quantum with a certificate of such insurance from the insurer which shall provide that insurer will notify Quantum in writing at least thirty (30) days prior to cancellation or refusal to renew any policy.
- e. National shall indemnify Quantum against any loss, liability, damage and expense which it may incur by reason of any claim made by third parties growing out of the acts or omissions of National in the performance of this agreement, the operation of said motor vehicle used in connection with National performing maintenance services as outlined in this agreement and any workers' compensation matter referred to in sub-paragraph 7 (B) (a) above.

8. Non-Assignment. Quantum agrees that it will not assign, transfer, sublet or lease its rights under this lease, without prior written consent of National which consent shall not be

unreasonably withheld, and will not pledge, mortgage or otherwise encumber or permit to exist upon or be subjected to any lien or charge, any right or interest of Quantum hereunder. Quantum agrees to keep appropriate signs and/or plaques on the locomotives to clearly show that the locomotives are not the property of Quantum and are owned by others.

9. Condition At Delivery. National warrants and represents that the locomotive subject to this lease shall be qualified prior to delivery and shall be in compliance with all applicable federal, state and local laws, regulations and requirements, including without limitation the Federal Railroad Administration requirements.

10. Warranty and Maintenance. National's warranty and maintenance obligation with respect to the locomotive shall be as set forth hereunder including Part A hereof, (Warranty and Maintenance Obligations).

11. Damage To Locomotive. Quantum shall pay for all damages caused by failure of Quantum to maintain an adequate level of crankcase oil in the air compressor or diesel engine of the locomotive or other neglect of Quantum or Quantum's employees or other persons using said locomotive while the locomotive is in Quantum's possession, regardless of whether the damage is discovered while the locomotive is in the possession of Quantum or upon inspection when the locomotive is returned to National, provided that National shall establish that any such damage in fact occurred while in Quantum's possession and as the result of the breach of any of Quantum's obligations hereunder. Quantum

further understands that National assumes no liability for injuries sustained by any person or employee of Quantum from the use of the locomotive except for injuries to National's employees resulting from the performance of National's obligations hereunder and for bodily injury or property damage resulting from National's failure to comply with its obligations set forth herein. National does not assume any liability for failure to keep the locomotive in proper condition or repair except as provided in Section 9 of this part.

12. Return of Locomotive. If Quantum does not exercise its option to renew the rental agreement in Section 2 of this part, Quantum shall return said locomotive to National at the end of the lease term in a condition as good as that in which it was received, normal wear and tear excepted and further excepting any condition resulting from (i) the failure of National to maintain said locomotives in accordance with Section 9 hereof, (ii) a breach of the warranty in Section 9, or (iii) National's failure to otherwise comply with the obligations set forth herein.

### C. GENERAL PROVISIONS

1. Payments. All payments or notices hereunder to be sent pursuant to this agreement shall be in writing and shall be addressed, if to National to NATIONAL RAILWAY EQUIPMENT CO., at 14400 S. Robey Street, P.O. Box 2270, Dixmoor, Illinois 60426, and if to Quantum at Quantum, P.O. Box 2919, Clinton, IA 52733-

2919, Attention Purchasing Department, or such other address as may be designated from time to time by either party in writing. All payments in arrearage shall bear eighteen percent (18%) per annum interest until date paid.

All payments are due in advance monthly installments with the first months rent and one months security deposit due at time of execution of lease agreement. All payments are due on the first day of each month.

IN WITNESS WHEREOF, the parties have signed this agreement.

NATIONAL RAILWAY EQUIPMENT CO.  
an Illinois Corporation by:

Stewart G. Kellinger Dir. Sales + Mkt.  
One of Its Officers

QUANTUM CHEMICAL CORPORATION  
a USI Division by:

Alan J. Houston

EXHIBIT "A"

LOCOMOTIVE TYPE

ROAD NUMBER

EMD SW 1200

0016